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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1856 of 1999

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-Yes.

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2. To be referred to the Reporter or not?-Yes.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

MANSUKHBHAI KANJIBHAI PATEL

Versus

GUJARAT SECONDARY EDUCATION BOARD

Appearance:

MR JT TRIVEDI for Petitioner
MR AD OZA for Respondent No. 1

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

Date of decision: 30/03/99

ORAL JUDGEMENT: (Per K.G. Balakrishnan, C.J.)

Originally, this Special Civil Application was filed by Mansukhbhai Kanjibhai Patel, alleging that 10 students were illegally denied permission to write the S.S.C. examination commencing on 15th March, 1999. Thereafter, the 10 students were impleaded as petitioners in this proceeding. The allegation in the Special Civil Application is to the effect that these 10 students paid the examination fees in time and submitted the forms to the Headmistress of Shree L.M. Sharda Mandir High School, but by some mistake, the Clerk of the School had not handed over the money and submitted the forms to the 1st respondent-Gujarat Secondary Education Board and the negligence of the Clerk resulted in denial of opportunity to the 10 students in appearing in the SSC examination. According to the petitioners, the students had done whatever they had to do in the matter of writing the examination and the Board was bound to permit these students to write the examination and, therefore, it is prayed that the 1st respondent-Board shall be directed to permit these students to write the examination.

Along with the original petition, an affidavit also has been filed by the Headmistress of the School, where it is stated that these 10 students had filed the requisite forms for appearing in the SSC Examination on 24.12.1998 and had also paid the examination fees at that time. It is further stated that one clerk, by name Mafatbhai B. Parmar, who was entrusted with the work of submission of the forms along with the amounts of fees, failed to hand over the forms and pay the fees of the students in question and it is submitted that there was no lapse on the part of any of the students. So, they may be permitted to write the examination.

The Chairman of the 1st respondent-Board filed a detailed affidavit-in-reply, denying the allegations in the Special Civil Application. It is contended that the 10 students, who were repeaters in writing the examination, had not submitted the forms in time. The entire programme of the examination was published well in advance and the last date for filing of the consolidated forms for the repeater students was 21.12.1998 and the same was to be presented with demand draft and the form should reach the office of the D.E.O. on or before 24.12.1998. The list of eligible candidates was prepared and sent to various schools as early as on 18.1.1999 and instruction was given to all the schools that they should check all the particulars of the school and the signatures of the students are to be obtained in the prescribed column and the proforma shall be returned to the Board on or before 25.1.1999. It is submitted that

in the instant case, the 3rd respondent-Headmistress of the school must have come to know as early as on 18.1.1999 that these 10 students were not going to appear for the ensuing examination and the allegation made by the Headmistress that she came to know of it on 9.3.1999 is denied. It is also stated that after verifying the forms and signatures of the students, the forms were submitted to the representatives of the Board on 25.1.1999 and after the above procedure, the Board would start preparing the list with seat numbers of the students and hall receipts and the same were given personally at district level on 5.3.1999. It is submitted that there was no negligence or omission on the part of the 1st respondent-Board.

We heard the petitioners' counsel and the counsel for the 1st respondent. The counsel for the petitioners submitted that the students had paid the examination fees in time and filled up the requisite forms and submitted the same to the 3rd respondent-Headmistress and the school was acting as the agent of the Board and, therefore, the payment of the fees to the School is sufficient to discharge the duty on the part of the students. It is argued that, therefore, the 1st respondent was bound to permit these students to write the examination. The counsel for the petitioners also brought to our notice that in a similar situation, a Division Bench of this Court had given direction to the Board to permit 152 students to write the examination. The counsel for the 1st respondent, on the other hand, contended that the 1st respondent is an independent statutory body, entrusted with the duty of conducting the SSC and HSC Examinations and these students did not pay the fees and submit the requisite forms in time and that the Board was not informed that these repeater students were appearing for the examination and their names were not presented by the school for writing the examination, which commenced from 15.3.1999.

At the outset, we must state that the SSC examination is now over and, therefore, there cannot be any direction to the respondents to permit these students to write the examination. The only question that arises is whether there was any negligence on the part of the 1st respondent in denying these petitioners the opportunity to write the SSC examination. According to the petitioners, they had paid the requisite fees and submitted the forms to the 3rd respondent-Headmistress in time, but there is no document to substantiate this contention. Even according to the Headmistress, there is no evidence to show that the forms were filled up in time

and the contention of the Headmistress is that even though these students paid the examination fees, the Clerk, Mafatbhai B. Parmar, who was entrusted with the work of submission of forms to the 1st respondent, failed to do so. It is also interesting to note that the very same clerk filed another writ petition, being Special Civil Application No.1772 of 1999, and sought direction from this Court that the Board may be directed to permit these students to write the examination. In that Special Civil Application, it was submitted by him that he had received the fees but he could not pay the same and the learned Single Judge, while dismissing the Special Civil Application, held that the petitioner therein must have played fraud on the Gujarat Secondary Education Board and for not forwarding the forms to the Board, the authorities were directed to take departmental action against the petitioner therein. In any case, there is no contention that the examination fee was paid in time to the Board. In the case of repeater students, the last date for submission of the application forms was 24.12.1998 and along with the publication of the result, it was made known to the students that they should submit fees and forms on or before 21.12.1998 and the school had to submit the forms to the D.E.O. on or before 24.12.1998. The Board had sent the list of eligible candidates to the school on 18.1.1999 and the School had to return the forms with signature and other details to the Board on 25.1.1999. The 3rd respondent-Headmistress would have been in a position to know that these repeater students were not permitted to write the examination. If the 3rd respondent had, in fact, received fees in time from these students, and at the time she received the lists of eligible candidates, it would have certainly known that the Board had not received the fees and the forms in respect of these students. At least at that juncture, the Headmistress should have made an enquiry as to what had happened to the money and the forms entrusted to the Clerk. She has no case that she had made any such enquiry. She has filed an affidavit sworn to by her on 16.3.1999, alleging that she was suffering from some illness and she could not satisfactorily discharge her official duties. No such averments are made in the affidavit dated 13.3.1999. The Clerk also did not do anything at that stage. It was only in the first week of March, 1999 the 3rd respondent-Headmistress and the Clerk approached the authorities to see that the students be permitted to write the examination and the 1st respondent Board rightly rejected the permission to these students. Even if it is assumed that these students had paid the fees to the school in time, we do not think that the Board was bound to permit these students to write the

examination as it had received neither the forms nor the fees from these students. The School, being a recognized school, is authorized to present candidates for examination. It is a privilege extended to the school and it cannot be said that it was acting as agent of the Board and even if the school had received the fees and the forms from the students, unless and until it is received by the Board, there is no corresponding duty on the part of the Board to permit these students to write the examination.

The petitioners students could not write the examination because of the negligence shown by the school authorities. The 1st respondent Board has detailed system for conducting the examination. It may be noted that about 569000 students appeared for the SSC examination and about 200107 students appeared for the HSC examination during March, 1999. The examination has been conducted with the help and assistance of various Government Officers, including the Police and the Revenue Officials. The procedure laid down by the Board should have been strictly followed by the candidates, who intended to appear for the examination. The negligence of the student or the school cannot be put at the door of the 1st respondent-Board. We do not find any lapse on the part of the 1st respondent-Board and the petitioners are not entitled to get any of the reliefs prayed for in the petition. The petition is without any merit and it is dismissed.

(apj)